that it was concealed in a bundle which No. 2 carried. There is no evidence except an opinion by the DPC 23 that accused No. 2 knew the contents of the bundle he carried, and it is, I think, indisputable that in order to make possession of anything criminal there must be consciousness on the part of the accused that he is in possession of the prohibited article, unless it is explicitly stated that mere possession without knowledge is an offence. The only other evidence showing a connection between No. 2 accused and the pistol is that of handing it over to accused No. 3. I cannot take this as possession of a pistol as envisaged by section 3 of the Ordinance No. 28 of 1946: it is rather in the nature of handling than being in possession and is of so remote and fleeting a nature as to preclude the idea of criminality.

For these reasons I am of the opinion that, if accused No. 2 was at any time in possession of the pistol Ex. A, it was such possession as the ass has of the saddle and not criminal.

The evidence of possession in regard to No. 3 accused is solely that of DPC 23 that No. 2 handed the pistol to No. 3 accused who at once handed it to the DPC, received it back from him and again at once handed it to accuse No. 1. Again in my opinion this "possession" is so remote from the intention of the intention of the Ordinance and so fleeting that it should be considered rather as handling than possession and cannot import any criminality. One may wonder what accused No. 3 was doing at the scene and how he was implicated, but the charge against him is unlawful possession and there is no evidence of that which touches him.

As to No. 1 accused the evidence of his connection with the pistol is far more abundant than in the case of the other two accused. There is reliable evidence that he negotiated for the sale of Ex. A, arranged for its production at the scene of the delivery, handled the weapon there, delivered it to DPC 23 and received from him $300 which he kept exclusively to himself as the price thereof. From this may it properly be inferred that he was in possession of the pistol Ex. A and that his handling of it was in a different capacity to that of the other two accused? I think it may.

Stroud's Judicial Dictionary defines possession *qua* the Criminal Law and Offences against Property as follows:—

> A moveable thing is said to be in possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.

Again custody is defined by the same author in these words:—

> Custody or possession....includes knowingly and wilfully having a thing in any field or other place, whether belonging to or occupied by him or not and whether such thing shall be so had for his own use or benefit or for that of any person.

Adopting these definitions, it is clear that accused No. 1 was so situated with respect to Ex. A that he had the power to deal with it as owner by negotiating a sale of it, and that the circumstances were such that he actually did so and delivered it himself to the purchaser: it is clear that accused No. 1, though he did not have actual physical possession, had control of the means of producing the weapon when required and disposing of it. From this it would seem an inescapable conclusion that the possession of Ex. A on 26-10-46 was in accused No. 1.

The prosecution has proved that the possession was unlawful.

I therefore find No. 1 accused guilty of the offence charged under section 3 Ordinance 28/46 and No. 2 and No. 3 not guilty.

I acquit No. 2 and 3 of this charge.

The maximum penalty for this offence is 10 years imprisonment or fine of $10,000 or both. The offence is, in these days, so serious a one that the legislature has passed this enactment especially to increase the punishment therefor. The accused is a man of sufficient education and experience to be well aware of the fact that an unregistered pistol sold in this way can only be purchased for an illegal and improper purpose and in all probability to be used for the committing of an offence of intimidation, robbery, murder or some such crime of the greatest heinousness. There can be no other explanation of the clandestine purchase of an unlicensed pistol than that it is required for an evil purpose by the purchaser or for helping on such a purpose.

The accused has no previous convictions and in view of that I sentence him to what is generally accepted as the correct term for a first offence, namely one-third of the maximum sentence. He will go to prison with R.I. for 3 years from date of his arrest.

Sentence Accordingly.

VELUMAILUM v. PUBLIC PROSECUTOR.

[Criminal Revision (Laville, J.) February 15, 1947]

Penal Code, Section 199 — False statement made in any declaration which is by law receivable as evidence — Statutory Declarations Enactment — Omission in declaration of words "and by virtue of the Statutory

Declarations Enactment" — Statement though wilfully false and made for the purpose of fraud is not criminally punishable — Revision under Section 325, Criminal Procedure Code.

The appellant was charged in the District Court, Johore Bahru, with knowingly making two false statements in a declaration made before the Presiding Officer, District Court of the British Military Administration, touching certain matters material to the object for which the declaration was made, an offence against Section 199 of the Penal Code. The object for which the declaration was made was to satisfy the Commissioner of Police, Johore, that he was a suitable candidate for appointment to the Police. The appellant pleaded guilty and was convicted and sentenced to six months rigorous imprisonment. It appeared that the statement made by the appellant was a solemn declaration form which followed that set out in the Schedule to the Statutory Declarations Enactment No. 20 Johore Laws, but the words "and by virtue of the Statutory Declarations Enactment" was omitted. The appellant appealed against his conviction and sentence and the appeal was dismissed, but in view of certain facts disclosed in the record and on examination of the declaration itself, the Court decided to act in revision under Section 325 of the Criminal Procedure Code.

Held, (1) that in order to fall within the four walls of Section 199 of the Penal Code it is necessary that the statements made should be such that a Court of Justice or a public servant or other person is bound by law to receive them as evidence of any fact; (2) that the omission of the words "and by virtue of the Statutory Declarations Enactment" in this case was vital as it is those words that give the sanction of the Enactment to the declaration and without those sanctioning words the statement made by the appellant, though in form purporting to be one that can be accepted as evidence, was not such a one and the statement, though wilfully false and made for the purpose of fraud, is not criminally punishable.

CRIMINAL REVISION.

A. N. Mitra for the Appellant.

W. Martin Mc Call for the Respondent.

Laville, J. : — This is an appeal against the finding and sentence of the District Judge, Johore South, in D.C. Criminal Case No. 826/1946 tried by him at Johore Bahru on 19th December, 1946, in which the appellant Velumailum, detective police constable No. 33, was charged with making knowingly two false statements in a declaration made before the Presiding Officer, District Court of the British Military Administration, touching certain matters material to the object for which the declaration was made, an offence against section 199 of the Penal Code. The object for which the declaration was made was to satisfy the Commissioner of Police, Johore, that he was a suitable candidate for appointment to the Police.

At the hearing the charge was read and explained to the accused who stated he understood it. He pleaded guilty to the offence and stated he understood the nature of his plea. He was then convicted on his plea.

The prosecution was sanctioned by the P.P. under the provisions of section 129 (i) (b) of the Criminal Pro. Code. The Court after considering three admitted previous convictions and statements made by the accused in mitigation of the offence sentenced him to 6 months R.I.

At the hearing of his appeal the plea against conviction was rightly withdrawn by his counsel in view of section 305 Cr. Pro. Code and it was argued on accused's behalf that he misunderstood the form of the declaration he had made and had in any event carried out his duties as a D.P.C. without complaint made against him.

The appeal was dismissed and the finding and sentence maintained, but in view of certain facts disclosed in the record and on examination of the declaration itself, the Court decided to act in revision under section 325 Cr. Pro. Code.

At the trial the declaration signed by the accused on 4-3-46 before the Presiding Officer of the B.M.A. District Court for the purpose of satisfying the Commissioner of Police that he was a fit and proper person for enrolment as a P.C. was not put in evidence, though the whole charge arose out of and depended on that declaration. It was called for by this Court and produced therein.

The provisions of section 199 P.C. under which accused was charged are to the effect that any person making knowingly and falsely a declaration which a Court of Justice, or any public servant or other person is bound or authorised by law to receive as evidence of any fact touching any point material to the object for which the declaration is made commits an offence.

It is clear from accused's own recorded admissions in the District Court that the statements made in para (i) and (iii) of his statement to the District Judge B.M.A. in his agreement for Police service on 4-3-46 are false and were known to be false to him when he made them, and it is clear from their nature that they were material to the object for which they were made, viz. to ensure his enrolment and continuance in the Police force. But in order to fall within the four walls of section 199 P.C. it is necessary that such statements should be such that a Court of Justice or a public servant or other person is bound or authorised by law to receive them as evidence of any fact: the operative words are evidence of any fact. It cannot be said that a Court of Justice or a public servant or other person is bound by law to accept the statement made by the accused as evidence of the fact he states in it, or is even authorised by law to do so if it seems good to him: it is a statement made without the sanction of an oath

or legal affirmation and is just as much in need of proof before acceptance, or acceptance with the risk of it proving untrue, as any other statement made casually by any person. It requires investigation and independent corroboration, if it is desired to rely on it safely. The form in which the statement is made is a solemn declaration form which follows that set out in the Schedule to the Statutory Declarations Enactment No. 20 Johore Laws, but a vital omission is the words giving the sanction of that Enactment to the declaration, to wit "and by virtue of the Statutory Declarations Enactment". That Enactment lays down that declarations made under its provisions fall within the scope of section 199 P.C.: that is they are an authority to people to accept them as evidence of what they state if the people so wish, but do not bind them so to accept them. Without these sanctioning words the statement made by the appellant, though in form purporting to be one that can be accepted as evidence, is not such a one and the statement, though wilfully false and made for the purpose of fraud, is not criminally punishable.

For these reasons I am of the opinion that the conviction of appellant in this case even though he pleaded guilty cannot stand and the conviction and sentence must be set aside and accused acquitted under the provisions of section 325 Cr. Pro. Code, and I so order.

Conviction and Sentence Set Aside.

SOCKALINGAM CHETTIAR v. CHAN MOI (f).

[Appellate Civil Jurisdiction (Evans, J.) April 11, 1947]

Japanese Judgments and Civil Proceedings Ordinance, 1946 Section 7 — Validity of Letters of Administration granted during Japanese occupation — International Law.

In this case the appellant had sued in the District Court in ejectment claiming to be the landlord of No. 6 Lahat Road, Ipoh, of which the respondent was the tenant. The appellant sued as the administrator of the estate of S.P.S. Sathappa Chettiar (deceased). In the Court below, the respondent pleaded that appellant was not the owner of the premises and that the Letters of Administration cum testamento annexo granted to the appellant in respect of the estate of the original landlord deceased did not empower the appellant to claim under him as they were granted by a Japanese Court. The District Judge found this plea as to the letters of administration being invalid to be good and dismissed the suit.

Held, (1) that as the respondent had paid rent and attorned to the appellant after the grant was made, she was estopped from denying that the appellant was her landlord; (2) that the grant of letters of administration by the Japanese Court seemed to be an act carried on in accordance with the principles of International Law and was therefore good and valid, subject to any steps being taken to have it set aside; (3) that the Japanese Judgments and Civil Proceedings Ordinance, 1946 does not invalidate all Japanese decrees in legal proceedings.

Cases referred to :—

(1) *Jew v. Wood*, 3 Beav. 579.

(2) *Sutton v. London Chatham, and Dover Company*, 12 T.L.R. 425.

CIVIL APPEAL FROM DISTRICT JUDGE.

M. S. Mahendran for the Appellant.

Chin Swee Onn for the Respondent.

Evans, J. : —This appeal raises points of some novelty and interest. The appellant was the plaintiff in the District Court where he sued in ejectment claiming to be landlord of No. 6 Lahat Road Ipoh of which the respondent is now the tenant. The appellant twice obtained permission from the local Rent Board to bring proceedings for ejectment. The second was granted on 27th November 1946 and thereon notices were given determining the tenancy on 31st December 1946. The appellant then sued for ejectment.

In the court below the respondent pleaded that the appellant is not the owner of the premises; he made some plea as to the "capacity" in which the plaintiff obtained his permission which was wisely dropped; and went on to plead that Letters of Administration *cum testamento annexo* granted to the appellant in respect of the estate of the original landlord deceased did not empower the appellant to claim under him as they were granted by a Japanese Court. He later filed, apparently without any leave, what is described as an amended Statement of Defence which in fact purports to add a plea that the Rent Board had acted *ultra vires*.

The District Judge seems to have found the plea as to the Letters of Administration being invalid for the plaintiff's purpose good. He dismissed the suit therefor and this point alone was argued in front of me. It was however not disputed that the tenant had paid rent and attorned to the appellant after the grant was made, and continued to pay rent to him, and, it seems, even tendered rent after the determination of the tenancy. The first plea is in fact bad, as it does not matter whether the appellant is owner or not. The question is whether he is the respondent's landlord, and, on the above facts, that would seem a fact she is estopped from denying. If appellant was landlord for the purpose of giving a good receipt for rent, he was landlord for all others.

This point was put to appellant's Counsel who then referred to Section 116 of the Evidence Enactment but did not take the matter much further. The respondent argued that she was tenant of the estate. The estate however is not a person. Section 116 sets